

General Terms of Delivery

Milkpartners Sp.zo.o
Ul. Obrzezna 7A
02-691 Warszawa

§ 1 Scope of application

- (1) These General Conditions of Delivery shall apply to deliveries and services conducted for traders and entrepreneurs within the meaning of §14 BGB (German Civil Code), as well as legal entities in public law or special public funds.
- (2) These conditions shall be exclusively applicable; We do not accept any terms of the ordering party which differ from our general conditions unless our express consent is granted. Our general terms and conditions shall also apply if we have knowledge about the commercial conditions of the ordering party that conflict with or differ from our commercial terms and conditions, and the delivery and the service is performed with no restrictions.

§ 2 Conclusion of the agreement – Statements – Rights

- (1) The order submitted by the ordering party shall constitute a binding offer. Offers or quotations provided in advance shall not be binding. Orders or commissions may be accepted by us within fourteen days of the receipt thereof.
- (2) The oral commitments made by our representatives or other assistants need to be confirmed in a written form.
- (3) We shall reserve the right of ownership and copyright in relation to illustrations, drawings, designs, calculations and other documents. It shall also apply to those documents in a written form which are confidential. Written consent is required to hand the documents over to any third parties.

§ 3 Subject matter and services – Quality

- (1) When delivering specific products or in detail described products, we shall not be obliged with no expressed commission to provide advice on whether the client may use the products we supply for their processes and applications, unless we got to know about the crucial contractual circumstances or we must obtain such information, without gross negligence.
- (2) Information regarding the subject matter of the delivery or service (e.g. weight, dimensions, utility values, load bearing capacity, tolerance and specifications) and presentations (e.g. drawings and illustrations) presented by us are indicative only, unless the usefulness for the purposes foreseen in the contract provides for accurate information.
- (3) The description of the subject matter of the agreement or the scope of delivery and services, specifications and technical data shall not to be construed as quality guarantee.
- (4) The ordering party may only submit qualitative claims regarding the ordered products to a reasonable amount which seems rational or is commercially available for products from the same price range as the ordered goods.
- (5) Any commercial deviation or deviations justified by legal regulations or technical improvements as well as replacements of components with equivalent parts shall be acceptable, unless they affect the possibility to use the product for the contractual purposes.

§ 4 Prices

- (1) Prices shall apply only for the agreed scope of service and delivery. Any additional or special services shall be charged separately.
- (2) Ex works prices are in EUR and do not include packaging, VAT and, in the case of supplies outside the country, all other customs and public duties.
- (3) In the event that the delivery or service is delayed for more than 4 months from the date of signing the agreement and if the costs of salaries, materials, packaging, freight, taxes or charges increase in the meantime, the price may change with regard to the aforementioned conditions. As far as the agreed price is based on the catalogue price, and the delivery or service is executed after 4 months after the date of conclusion of the agreement, the catalogue prices applicable at the moment of the de-

livery or service performance shall be valid (reduced by the agreed or fixed discount). Should the price change by more than 5% in comparison to the price specified in the agreement, the ordering party shall have the right to withdraw from the agreement, if despite being informed about the intention to withdraw from the agreement, we will not cancel the price change.

§ 5 Payment terms

- (1) Unless otherwise agreed, the remuneration shall be paid in full with no discount deduction immediately upon receipt of the products or the service performance.
- (2) The right of the ordering party to offset mutual charges shall be applicable only if their claims are legally established, undisputed or acknowledged by us.
- (3) The right of retention shall be excluded, unless the claim of the client is based on the same agreement, and is undisputed or binding.
- (4) If the ordering party defaults on payment of a due claim, all existing claims which we have towards the purchaser (including those arising out of other legal relationships) and those which have just become due, shall be due immediately; in this case, all payment deadlines, deferrals or other similar financial aids shall expire.
- (5) If, after the conclusion of the agreement, our claim regarding the purchase price is endangered due to limited performance capacity of the ordering party (e.g. initiation of insolvency proceedings), in accordance with provisions we shall be entitled to refuse to act or - after the deadline - to withdraw from the agreement (§321 BGB). In the case of agreements for the production of unacceptable items (individual orders), we shall be entitled to withdraw from the agreement immediately; Statutory provisions concerning the dispensability of the deadline shall remain unaffected.

§ 6 Deadline of delivery and service performance

- (1) Deadlines of delivery or service performance must be confirmed in writing. Unless the obligation to cooperate is required, the agreed period shall not commence until the ordering party has fulfilled this obligation. In this respect, compliance with payment arrangements shall constitute as well the duty to cooperate.
- (2) We shall be entitled to partial deliveries in the following cases:
 - partial delivery for the ordering party may be used for contractual purposes,
 - delivery of the remaining ordered products is ensured,
 - there are no additional complications and costs for the ordering party (unless the ordering party agrees to bear these costs).
- (3) In the event when due to reasons beyond our control, we do not receive from our subcontractors or sub-suppliers supplies or services in spite of the correct supply, the supplies are unsuitable, delayed or in the event of force majeure, we shall inform the ordering party about the situation on time. In such a case we shall be entitled to postpone the delivery or service performance for the duration of the hindrance, or to partially or completely withdraw from the non-executed part of the agreement provided that the obligation to inform has been fulfilled and we have not taken over the risk of delivery or production. Force majeure shall include strikes, blockades, official interventions, shortages of energy and raw materials, road standstills due to reasons beyond our control, operational difficulties caused by e.g. fire, water, damage to machinery and any other obstructions that objectively were not caused by us.
- (4) If the deadline of delivery or service performance was agreed and subsequently as a result of the events described in par. 3 above was exceeded by more than four weeks or in the case of non-binding agreements, compliance with the agreement is objectively unreasonable for the ordering party, the ordering party shall be entitled to withdraw from the non-executed part of the agreement. Further rights of the ordering party in particular claims for damages shall not be applicable in this case.

§ 7 Default of the contractor

- (1) If the right enforcement procedure assumes extension of the deadline, a period of at least two weeks shall be established.
- (2) Contractual penalties for delays in delivery or service performance shall be excluded.

§ 8 General commitments and withdrawals

- (1) As long as the goods to be delivered are intended only for general purposes, we shall be liable for compensation for damages if we cannot prove that we are not liable for non-performance, delays in delivery or faulty performance. In addition, the provisions of §12 GTC apply.
- (2) In accordance with the provisions, the ordering party may withdraw from the agreement only if we are liable for the breach of duty.

§ 9 Performance – Risk transfer – Receipt

- (1) Ex works delivery shall be conducted to the place of service performance. At the request and expense of the ordering party, the goods shall be sent to another destination (distance selling). Unless otherwise agreed, we shall be entitled to determine the type of package (in particular the choice upon the transport company, route and package).
- (2) Only at the express request of the ordering party and at its expense, the package will be insured against theft, damage, damage during transport, damage caused by fire or contact with water or other hazards.
- (3) The risk of accidental loss and damage to the products shall pass to ordering party at the latest with the transfer of the products. In the case of shipment, the risk of accidental loss and damage of products and the risk of delay shall be transferred to the freight forwarder, courier or the person or entity that is supposed to deliver the goods.
- (4) If the delivery was agreed, the delivery method is decisive as far as the risk transfer is concerned. In addition, in the case of agreed delivery, law on contracts for work and services shall be applicable. Default of receipt by the ordering party shall be equivalent to the receipt or transfer.

§ 10 Default of receipt by the ordering party

- (1) If the ordering party defaults on receipt, neglects the obligation to cooperate or our delivery is delayed from other reasons for which the ordering party is liable, we shall be entitled to demand compensation for the resulting damage, including the reimbursement of additional costs (e.g. storage costs). In this respect a lump-sum compensation of 0.25% of the amount of the invoice for the goods to be stored within one week from the date of delivery or in the absence of such date – the notification about the readiness to ship the goods shall be applicable. Evidence for higher damages and our statutory claims (in particular reimbursement of additional expenses, adequate compensation, termination) shall remain unchanged; however, the lump sum shall be accounted for further monetary claims. The ordering party shall prove that we did not suffer any damage at all or we suffered much less damage than the aforementioned lump sum.
- (2) If, despite the agreed deadline and delay, the ordering party will not receive the ordered products and in connection with the claim for compensation which arose as a result thereof, we shall be entitled to compensation in the amount of 15% of the selling price for the costs incurred in connection with the order implementation and lost profits. The ordering party shall prove that we did not suffer any damage at all or we suffered much less damage than the aforementioned lump sum

§ 11 Liability for defects – limitation period

- (1) The ordering party shall be obliged to comply with the obligations under §377 HGB (German Commercial Code). Any defects noted during delivery should be reported to the shipping com-

pany, which also bears responsibility for information receipt of the damaged products. The claim must contain a detailed description of the damage. Claims not submitted on time shall exclude all claims of the ordering party.

- (2) We shall not be responsible for public statements, promotion or advertising of any other manufacturer or other entity; they do not provide information on the quality of the goods referred to in the agreement.
- (3) Commencement of processing, combining or mixing goods with other products shall mean that the products are in conformity with the agreement and the ordering party confirmed the takeover thereof. In the case of further shipment of products from the original place of delivery, the same provision shall apply.
- (4) Claims made by the ordering party regarding the costs incurred in connection with later performance, in particular the costs of transport, travel, labor and material costs, shall be excluded if these expenses increased because the goods delivered by us were subsequently transported to a different place than the branch of the ordering party unless the delivery of the products corresponds to their application in accordance with the intended purpose.
- (5) If the complaint was unjustified because the ordering party recognized or unintentionally did not recognize that the reason of the alleged product defect fell within the scope of its responsibility, we shall be entitled to seek costs reimbursement from the ordering party.
- (6) Product defect claims shall expire after 12 months. This provision shall not apply to construction agreements, products that were used with their intended purpose in buildings and which caused their defects, claims related to loss of life, injury and damage to health, and at least gross violations of our obligations, or one of our representatives or persons performing our obligations. Special legal provisions concerning material claims for surrender to third parties in the event of fraud and failures in delivery during the delivery to the end consumer shall remain unaffected.

§ 12 Liability for defects

- (1) We shall be liable for damages without limitation - for any legal reason - in the case of:
 - a) intended actions,
 - b) risk of loss of life, injury, or health damage,
 - c) defects that were deliberately concealed or the absence of which we had guaranteed,
 - d) defects in the delivered goods, provided that the liability was not guaranteed under the Product Liability Act with regard to persons or material damage to private items.
- (2) In the event of a culpable breach of material contractual obligations, we shall also be liable in the case of ordinary negligence limited to the damage that we had predicted upon conclusion of the agreement as possible consequences of the violation of agreement or which we should have anticipated if all due care had been exercised when using the product for its intended purpose.

Significant contractual obligations are obligations that safeguard important legal provisions for the ordering party and must be granted in accordance with the content and purpose of the agreement, and such commitments the observance of which makes it possible to perform the agreement and in the performance of which the ordering party trusts.
- (3) We shall also be liable for damages caused by gross negligence. In the event when commitments other than non-material contractual obligations and legal interests other than life, body or health interests are violated, our liability in the case of gross negligence shall be limited to the damage we anticipated following the conclusion of the agreement as possible consequences of the violation of agreement or which we should have anticipated if all due care had been exercised when using the product for its intended purpose.
- (4) Further claims shall be excluded.
- (5) The exemptions and restrictions referred to in par. 1 to 4 shall also be applicable in the case of similar violation of obligations

by agents performing our obligations.

- (6) Insofar as the liability for damage towards us is excluded or limited, this provision shall also refer to the personal liability of our bodies, legal representatives and agents performing our obligations.

§ 13 Retention of title

- (1) We shall reserve the ownership title of the products until full payment of all current and future claims arising out of the agreement and business contacts (secured claims).
- (2) The goods in respect of which we reserve the ownership title may not be pledged to third parties or transferred as security. The purchaser shall be obliged to inform us promptly in writing of any access of third parties to our products. It shall also apply to other types of loss of value. Notwithstanding this, the ordering party shall be obliged to inform the third party in advance of the existing rights towards the products. The costs of our intervention shall be borne by the ordering party, unless the third party is able to cover them.
- (3) The ordering party shall be authorized to resell and/or process the goods subject to ownership retention in the ordinary course of business. In this case, the following shall apply:
 - a) The ownership retention shall also apply to products formed as a result of processing, mixing, and merging the products at their full value, towards which we are considered as the manufacturer. If, while processing, mixing, or merging the products with products of third party, towards which the third party has the title of ownership, we shall acquire the right of co-ownership to this new product in proportion to the invoice value of the processed, mixed or goods associated therewith. In addition, the same provision shall apply to products with retention of the ownership title.
 - b) The ordering party hereby assigns the claims arising out of the resale of goods to third parties immediately in full or in the amount of our share in the co-ownership in accordance with par. b). We hereby accept the assignment. The obligations of the ordering party described in par. 2 shall also refer to the assigned claims.
 - c) The authorization of the ordering party to collect the claim shall remain unaffected. We shall undertake not to collect the claim until the ordering party properly fulfills its payment obligations, is not in arrears with payment, no insolvency proceeding was initiated and there is no evidence of lack of working capacity. However, if so, we shall be entitled to require the ordering party to inform us about the assigned claims and their debtors, provide us with all information necessary to recover them, transfer the relevant documents and notify the debtors (third parties) of the assignment.
- d) If the collateral value exceeds our claims by more than 10%, we may decide at the request of the ordering party to release the collateral at our discretion.

§ 14 Collection, storage and dissemination of data

We shall be authorized to collect, store, process and use the information and data related to the ordering party and to transfer it to third parties to store, process and use it, in particular in order to collect claims or manage debtors.

§ 15 Invoicing

- (1) For each delivery/service, an invoice with the order number must be immediately issued and delivered as soon as possible. The invoice must be issued in accordance with the order. Invoices must meet legal requirements. Any additional services or subsequent deliveries shall be invoiced separately.
- (2) We shall be entitled to not accept invoices which were not issued in accordance with the provisions referred to in §15.1.
- (3) Electronic invoices should be sent to the email address: Invoice@milkpartners.com
- (4) We shall issue and accept invoices only in PDF format.

§ 16 Protection rights of third parties

- (1) If a third party asserts claims against the ordering party towards the industrial property rights or copyrights (hereinafter: protection rights) through the products provided by us and it will negatively affect the use of the product under the agreement by the ordering party or it will make it impossible at all, the ordering party shall be obliged to immediately inform us about the situation. The ordering party shall not confirm the alleged infringement, and any disputes with a third party regarding the breach of the protection rights shall be conducted only in agreement with us. If due to damage reduction or other important grounds the ordering party suspends the application of the products, it shall be obliged to inform the third party that the suspension of the use of the products is not related to the confirmation of the violation of the protection rights.
- (2) The ordering party shall not assert claims for violation of the protection rights, if the ordering party is held responsible for it and it acted on the basis of special requirements of the ordering party, is a result of application not provided for in the product documentation or results from the fact that the product was modified by the ordering party or was used with products not supplied by us.

§ 17 Applicable law – Jurisdiction

- (1) The polish law shall be applicable, except for the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the standards applicable to other legal systems. As it was agreed, the provisions of the UN Convention concerning the possibility of assignment of claims in international trade are currently conditional at the moment they enter into force.
- (2) The exclusive place of jurisdiction is Warsaw.

§ 18 Severability clause

If particular points of the agreements are held illegal, the remainder of the agreement shall still apply.